Morris, Craig

From: Cohn, Debbie
Sent: Wednesday, January 19, 2011 4:30 PM
To: Morris, Craig; Hickey, Toni
Cc: Marsh, Sharon
Subject: FW: Trademark Bullies Study

FYI

From: Kappos, David
Sent: Wednesday, January 19, 2011 4:28 PM
To: Cohn, Debbie
Subject: Fw: Trademark Bullies Study

(b)(5)

David J. Kappos
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Email: David.Kappos@uspto.gov
Phone: 571-272-8600
Fax: 571-273-0464

From: Scott Smith (b)(6)
Sent: Wednesday, January 19, 2011 04:04 PM
To: Kappos, David
Subject: RE: Trademark Bullies Study

BizStarz
PR for Newsworthy Entrepreneurs

U.S. Patent and Trademark Office looking into "trademark bullies"
Seeks information about small businesses that have been harassed and harmed

David,

I think you'll want to check out my **report** to the **U.S. Patent and Trademark Office** for their **study** abou bullies.

Hopefully the USPTO's study will lead to Congressional hearings, with CEOs of companies suspected of b trademark bullies (such as **Peter Shea** of **Entrepreneur magazine**), being subpoenaed and compelled to a answer questions about their predatory attacks against small businesses.

Trademark bullying is a major and growing problem. It's stifling competition, ruining countless small busi hurting our already hurting economy.

Even attorneys are fed up and demanding changes. Attorney Ronald D. Coleman of New York-based Goet Fitzpatrick LLP, believes that:

> "...trademark law practice has...descended to an anti-competitive methodology utilized by dominan market players not to prevent consumer confusion, as was its original rationale, but to reduce consur choice and overall welfare by preventing competition...The civil litigation system was not designed the use of large companies to put small enterprises out of business, but it is perfectly suited for doin ...Congress must level the playing field..." (Source: Federalist Society for Law and Public Policy Studies, September 2010. *Click here* for PDF copy of this essay)

Also, below is updated information about trademark bully Entrepreneur magazine's claims of owning the v "entrepreneur," and their attacks against small businesses that use the word "entrepreneur."

Let me know if you have any questions or comments!

Entrepreneurially yours,

Scott Smith, President
BizStarz

(b)(6)

"If the word 'entrepreneur' is part of your small-business name, then you may be in for trouble."
-BusinessWeek

Entrepreneur Magazine bullies their way to the top
Business Review USA
As an entrepreneur or business owner in the U.S., you may be well aware of Orange County-based Entrepr Magazine and their quest to take down each small business, website, and beyond that is using the term "en as part of their business name. For the last several years, the magazine publisher has fought against every e possible that uses the word "entrepreneur" in their business name. Entrepreneur Media Inc. (EMI) claims t rights to the variations of the word.
Read more >>

See below for additional information, including a list of contacts.

Texas Entrepreneur Strikes Back, Sues Entrepreneur Magazine

Suit Filed to Cancel Entrepreneur Magazine's Trademarks

AUSTIN, TX - Daniel R. Castro, the founder of EntrepreneurOlogy, has filed a federal lawsuit against Ent Media, Inc., the publisher of Entrepreneur Magazine. Castro's lawsuit charges that EMI's controversial tra the word "entrepreneur" are unconstitutional, invalid, unenforceable, and should be cancelled. Click *here* f copy.

Castro's lawsuit is an aggressive response to EMI's threats to sue him for trademark infringement, unfair c deceptive acts and practices, cybersquatting, and misappropriation of goodwill, reputation, and business pr he doesn't immediately "cease and desist" all use of the word "entrepreneur," including EntrepreneurOlogy

word coined by Castro. Though outrageous to Castro and other entrepreneurs, EMI claims to own all right: variations of the word "entrepreneur," a common noun that predates EMI by several hundred years.

Mark A. Lemley, a distinguished professor of intellectual property law at Stanford Law School who is assi Castro, points out that, "Trademark law doesn't give anyone the exclusive right to common English words, all variants of those words. Castro is standing up for the rights of entrepreneurs everywhere to use the term entrepreneur."

The lawsuit, filed in the U.S. District Court for the Western District of Texas, also charges EMI with rever name hijacking for using false cybersquatting claims and "threats of lawsuits against anyone who uses any of the common noun 'entrepreneur'...in an attempt to steal the lawfully owned and registered domain name many small business owners," and for violating the Sherman Antitrust Act by attempting to monopolize us word entrepreneur by "engaging in a pattern of anticompetitive conduct designed to create barriers to entry exclude competition."

According to Castro, who is a business litigation attorney and partner in the law firm of Castro & Baker, L Austin, Texas, and also owns a real estate company, a mortgage company, and a property management cor "This 'David vs. Goliath' suit was filed against EMI not to prevent EMI from publishing its magazine abou entrepreneurs, but to ensure that myself and other entrepreneurs can compete openly and fairly in the mark provides goods and services to entrepreneurs, without threat of litigation by EMI."

Castro also wants to know what entrepreneurs all over the country want to know: "Why is a company that support entrepreneurs and owes its entire existence to entrepreneurs, using its vast resources to crush entre just for using the word entrepreneur?" And would EMI's advertisers and subscribers continue to give mone they knew their money is funding EMI's efforts to monopolize the word entrepreneur, and their attacks aga entrepreneurs that use the word entrepreneur?

About EntrepreneurOlogy

Headquartered in Austin, Texas, EntrepreneurOlogy was founded by Daniel R. Castro, and is dedicated to empowering entrepreneurs. EntrepreneurOlogy provides an online network of lawyers, CPAs, MBAs, busi owners, and computer gurus to assist with the obstacles and challenges faced by entrepreneurs. Entreprene also conducts customized boot camps for entrepreneurs, and customized workshops for executives who wa how to be more entrepreneurial. For more information about EntrepreneurOlogy or its founder, Daniel R. (www.EntrepreneurOlogy.com or call 1-512-732-0111.

Media Contacts:

Daniel R. Castro
Castro & Baker, LLP
(b)(6)

Mark A. Lemley
Stanford Law School
(b)(6)

Scott Smith
BizStarz
(b)(6)

Peter Shea, CEO/Chairman
Entrepreneur Media, Inc.
(b)(6)

William "Bill" Barber (*bio*)
Attorney for EMI
(b)(6)

Perry Viscounty (*bio*)
Attorney for EMI
(b)(6)

SEE BELOW FOR MORE INFORMATION ABOUT ENTREPRENEUR MAGAZINE'S TRADEMARK BATTLES:

BizStarz

PR for Newsworthy Entrepreneurs

"*I think what Entrepreneur magazine is doing is symptomatic of what's wrong with trademark law today*....you can send reporters my way."
Mark A. Lemley, William H. Neukom Professor, Stanford Law School
Director, Stanford Program in Law, Science, and Technology
Partner, Durie Tangri LLP

Entrepreneur Media Inc., publisher of ***Entrepreneur*** magazine, touts itself as being "the premier content provider for and about entrepreneurs." EMI obviously wants to profit from the tremendous goodwill associated with entrepreneurs by having advertisers and entrepreneurs believe that it's wholly dedicated to supporting entrepreneurs.

However, what EMI desperately doesn't want advertisers and entrepreneurs to know, is that EMI was started by convicted bank robber **Chase Revel** as a way to peddle get-rich-quick schemes, and that for decades EMI has been sneakily trying to monopolize the word "entrepreneur." Though ludicrous, EMI claims that it owns ALL rights to the word entrepreneur. Worse yet, EMI is using its vast resources to wage war against small entrepreneurs and organizations that use the word entrepreneur.

For your convenience, below are excerpts from numerous news articles about EMI's efforts to monopolize the word entrepreneur, plus their other hypocritical and unethical business practices. These articles span several decades and expose much of EMI's controversial history and leadership, and what ***USA Today*** referred to as a "scorched-earth policy."

Let me know if you have any questions or are aware of any entrepreneurs caught in the cross-hairs of EMI's business killing trademark battles.

NOTE: Make sure to forward this e-mail to entrepreneurs and reporters who are (or should be) concerned about this very troublesome problem for anyone who uses the word entrepreneur.

Entrepreneurially yours,

Scott Smith, President
BizStarz
(b)(6)

ENTREPRENEURS SPEAK OUT!

"Entrepreneur Media put very little effort into trying to be reasonable or even polite. They are simply abusing the legal system to try to steal a name that has been in the English vocabulary for years."
Brad Wardell, CEO, Stardock Corporation, Creator of "Entrepreneur" computer game

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"I registered Entrepreneur.com in 1994 when it was still free to register domain names. Unfortunately, I can't comment about this because of what I signed, but I really wish I still had the domain."
James Borzilleri, former owner of Entrepreneur.com
(EMI reportedly went after James in 1999, forcing him to sell for just $50,000, even though Entrepreneur.com was estimated to be worth $500,000+ at the time).

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"I felt like I was mugged. They are trying to commandeer this word and remove it from the

(b)(6)

P.S. I will soon be launching **BrandLarceny.com**, a website devoted to exposing and stopping out of control "brand name bullies" such as Entrepreneur Media.

Entrepreneur Magazine bullies their way to the top
Business Review USA
As an entrepreneur or business owner in the U.S., you may be well aware of Orange County-based Entrepreneur Magazine and their quest to take down each small business, website, and beyond that is using the term "entrepreneur" as part of their business name. For the last several years, the magazine publisher has fought against every entity possible that uses the word "entrepreneur" in their business name. Entrepreneur Media Inc. (EMI) claims to own all rights to the variations of the word.
Read more >>

Entrepreneur Media Sued Over 'Entrepreneur.Ology' Trademark
Bloomberg
Castro claims the publisher is attempting to "kidnap" the word [entrepreneur], which he said has been used by authors "in their books and articles for hundreds of years." Lawyer Deborah A. Gubernick of Latham & Watkins, who represented the company at the U.S. Patent and Trademark Office in an attempt to block Castro's trademark from being issued, didn't immediately respond to an e-mail and a phone call seeking comment.
Read more >>

Boulder publication losing 'Entrepreneur' name
Boulder Daily Camera
Virtual Entrepreneur Magazine receives cease-and-desist letter from publisher of Entrepreneur. Lily Chambers, Virtual Entrepreneur's owner, said she was caught off-guard when she received the e-mailed letter from Jones Day's Ashley Wilkes and a subsequent certified letter in the mail. "My first reaction was, 'You've got to be kidding me. This is the most ridiculous thing I've ever heard,'" Chambers said. EMI attorney Mark Finkelstein said he was unable to get approval from his client to speak on the topic and that his client did not have enough time to respond.
Read more >>

Entrepreneurs Must Choose Their Words With Care
The New York Times

language."
Greg McLemore, Owner, Entrepreneurs.com (EMI quickly dropped their lawsuit against Greg after realizing he had tons of money and would aggressively fight back. Ironically, Entrepreneurs.com is now a "gripe" site against EMI)

•••

"A legal fight would have put us under."
Gelly Borromeo, former publisher, Asian Enterprise Magazine (formerly Asian Entrepreneur Magazine)

•••

"It's no small irony that EMI, a company that claims to be 'the premier content provider for and about entrepreneurs,' has made international headlines for its legal attacks against entrepreneurs that use the word entrepreneur."
Scott Smith, President, BizStarz (founder of EntrepreneurPR, and the point man in the battle to end EMI's tyranny on the word "entrepreneur")

•••

"They just bully you."
Jerrold Jenkins, Founder, Publishing Entrepreneur (now Independent Publisher)

•••

"Here we are, trying to start our own business, and looking to their magazine for advice, and now they're trying to stop us. Ironically, before starting the 3Entrepreneurs LLC business, I was - and, technically still am - a

Entrepreneur magazine is playing hardball to stop entrepreneurs from using the word entrepreneur. Can a publication claim a common word as its own property? A lot of publications contain the words business, money and times. What is so special about the word entrepreneur? **Ronald Young**, Entrepreneur Media's corporate counsel, makes no apologies for the company's aggressive legal stance.
Read more >>

Somebody claims to own the trademark to "entrepreneur"
Forbes Magazine
Entrepreneur Media, the Irvine, Calif.-based parent of *Entrepreneur*, has protected its trademark name by going after small businesses that use the word "entrepreneur"...Smart business, no doubt. But crippling to some of the very people it purports to help. Among the sundry victims: ***Asian Entrepreneur***. The Diamond Bar, Calif. publication changed its name to *Asian Enterprise* after receiving a cease-and-desist letter.
Read more >>

Entrepreneur magazine CEO and racist letters
BizStarz
Peter Shea, Entrepreneur magazine's CEO, is believed to be responsible for racist letters sent to Scott Smith, president of BizStarz, a public relations firm for entrepreneurs. A mix of French, Black and German, Scott has been fighting Entrepreneur magazine's efforts to monopolize the word "entrepreneur" for over a decade. Scott has been told that very few **African-Americans** have worked at Entrepreneur magazine since Shea bought it out of bankruptcy in the mid 1980s, none in management-level positions. The letters make repeated use of the "N" word and include statements such as: "Get it through your minority owned thick head of yours you ignorant, lazy, half breeded bastard! Entrepreneur Media does have exclusive rights to the word 'entrepreneur.'"

Entrepreneur magazine attorneys placed on list of unethical attorneys
Association for Honest Attorneys
We believe the following [EMI] lawyers are guilty of unethical practices [Mark A. Finkelstein, Ronald L. Young, and Deborah A. Gubernick]. Our opinion is based on documented complaints received by clients, personal experience and/or news media reports.
Read more >>

A Note About My Time at Entrepreneur Magazine
AltAngeles.com
The real reason behind my termination was editor-in-chief **Amy Cosper's** growing distaste for the presence of a knowing soul. You see, to call Cosper a journalist would be a stretch. Her own, official bio at Entrepreneur.com boasts that her previous claim to [fame] was the job of

subscriber of Entrepreneur magazine. I'm not planning to re-up."
Heather Tornincasa, Co-Founder/Clothing Designer, 3Entrepreneurs, LLC (Heather and her sisters were ultimately forced to abandon their clothing business dream)

•••

"(EMI) has somehow browbeat people into believing they own the word. They go after the small guys because they know they can."
Neil Markva, Intellectual Property Attorney (Neil's son Kurt formerly owned EntrepreneurGRIP)

•••

"I can't build a commercial site because there's been the threat of litigation."
Jeff Busche, Owner, Entrepreneur.net (EMI quickly dropped their lawsuit against Jeff after realizing he could and would fight back. Ironically, Entrepreneur.net is now a "gripe" site against EMI)

•••

"I have neither the time, the energy, the money, nor the interest to take on Goliath. So the only option was to change the name of our magazine."
Joyce Reid, Editor-in-Chief, Gift Entrepreneurs Magazine (now Gift Retailers Connection)

•••

"It appears that we are indeed within the scope of the 'aggressive efforts' of Entrepreneur

"entrepreneur-in-residence" at WiesnerMedia...There's not a word about being a journalist.
Read more >>

***Entrepreneur* Mag Mass Exodus**
mediabistro.com: FishBowlLA
Four staff members of Irvine-based Entrepreneur magazine and Entrepreneur.com asked for - and received - buyouts this week. But why...walk away from staff positions at a time when most journalists are desperate for work? We've heard rumor that Editor in Chief **Amy Cosper** is a nightmare to work for....
Read more >>

Entrepreneur magazine encourages drinking by business owners and editors
PRNewswire
"Drinking is good for business when done the right way in the right place," concluded [Amy] **Cosper**, while sipping her own glass of whiskey after putting the July issue of Entrepreneur magazine to bed.
Read more >>

Bi-coastal court fight erupts over 'entrepreneur' trademarks
The Orange County Register
Global accounting giant Ernst & Young and Entrepreneur Media in Irvine are suing each other over the use of the phrase "**Entrepreneur of the Year**." The issue has come up between the two companies before. In 1994, Entrepreneur magazine launched an Entrepreneur of the Year contest. Ernst & Young sent a letter about the trademark infringement, and the magazine dropped the contest for unrelated reasons according to a letter from the magazine's attorney that in included in the newest lawsuit.
Read more >>

Entrepreneur's argument may hold up in court, but what about for subscribers?
FOLIO Magazine
Entrepreneur argued that it is "under no duty to provide information with care to its readers." I'm sorry, what?!?! If not, then why publish a magazine or Web site in the first place? ("Screw readers, they don't need trusted information!") What about the subscribers who invest in Entrepreneur? Don't they deserve accuracy? Again, it's probably all legaleze, but it's awfully weird for a publisher to argue it isn't obligated to care about its readers.
Read more >>

Entrepreneur Media Wants to Have Its Cake and Eat It Too
About.com "Entrepreneurs Guide"
In their suit against E&Y, they claim that the "**Entrepreneur of the Year** trademark is invalid and unenforceable because

Magazine to monopolize the word 'entrepreneur'. From my previous experience with trademark applications, I know that one cannot trademark a descriptive word or phrase. Therefore I'm surprised that the U.S. Patent Office would grant such a trademark."
S. Tom Emerson, PhD, Professor of Entrepreneurship, Former Director, Donald H. Jones Center for Entrepreneurship Carnegie Mellon University

...

"The most recent voicemail was to speak with me about 'cancelling' my trademark application, as if it's just a minor event. Unbelievable. Unfortunately, I'm not really in a position to pay legal fees - I'm in graduate business school."
Edmund Wilson, Past President, Entrepreneurs Club, Univ. of Virginia, Founder, YourEntrepreneur.com

...

"I received a letter from the law offices of Latham & Watkins (Big expensive law firm)... Entrepreneur Magazine seems to think they own this word that is part of the English language."
Lisa Argiris Canning, Founder, Entrepreneur The Arts

...

"Change doesn't scare most entrepreneurs. We thrive on it, right? I (had) a tight budget and an exciting strategic plan for the year. Within days, I had a pending

the phrase is generic." So let me get this straight... "entrepreneur of the year" is generic, but just "entrepreneur" on its own isn't? Someone please explain this logic to me.
Read more >>

Battle erupts over the right to use the phrase "Entrepreneur Expo"
Expo Magazine
Scott Smith, President of Sacramento-based **BizStarz**, a public relations company for entrepreneurs, has filed a trademark fraud complaint against Entrepreneur Media Inc. (EMI), publishers of Entrepreneur magazine. The complaint alleges that EMI made false statements to the U.S. Patent and Trademark Office to secure rights to the words **"Entrepreneur Expo,"** claiming to be actively using the name for trade shows when it had stopped producing such trade events.
Read more >>

Entrepreneur Media caught bloating Internet traffic numbers
The New York Times
In late May, more than five million Web users vanished. The disappearing act came when **Nielsen/NetRatings**, a leading company in measuring Internet traffic, sharply cut its previously reported statistics for the financial Web site **Entrepreneur.com** to 2 million unique visitors in April, from 7.6 million. Why the change? For millions of Web surfers, Entrepreneur.com visited them – and not the other way around, the measurement company said. Entrepreneur.com, owned by Entrepreneur Media in Irvine, Calif., did not return calls seeking comment.
Read more >>

Entrepreneur magazine blatantly rips off famous 'Tabasco' trademark
FOLIO Magazine
The "Face Up" critique of the ABA Journal's Marlboro cover reminded me of what I refer to as Entrepreneur magazine's **"Tabasco Fiasco."** When Entrepreneur copied Tabasco's trademarked designed for their December 2003 cover they were contacted by the attorney of the McIlhenny Company, the parent company of Tabasco.

Entrepreneur magazine was founded by a convicted bank robber, serial con-artist
Los Angeles Times
Chase Revel, founder of Entrepreneur magazine and author of a number of books on how to start small businesses, took an unusually direct approach to raising capital early in his career. He robbed banks. Revel's name was not yet Revel, the lawsuit says. He was then known by his given name, John Leonard Burke. However, for the robbery scheme, which one Houston columnist later called "probably the most fantastic" in the city's history-Burke said he was Charles

lawsuit..."
Starla Sireno, Founder, The Fearless Entrepreneur

***

"We are ready to fight it. We feel that our use has nothing in common with their use. Our (children's) books are fictional stories."
Michael Harper, Co-Owner, The Little Entrepreneur

***

"It's interesting that Entrepreneur magazine is still engaging in the same bullying tactics all these years later. I wonder why they have nothing better to do. It's good that you and others are fighting back."
Diane Franklin, PhD, Former Executive Director, 128 Entrepreneurs Institute (a non-profit organization that provided assistance to Boston-area entrepreneurs)

***

"We rolled over since it would cost us a fortune to (fight it) and then what? I can spend a couple hundred thousand dollars elsewhere and should on behalf of my investors."
Christopher Hurn, Entrepreneur's Edge newsletter

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"These guys tried to bully me as well for my trademark of The Internet Entrepreneur. They sent me several letters threatening to sue me. I held out and received my trademark."
Mick Moore, Pacifica Marketing Group Inc.

BizStarz

Public relations for newsworthy entrepreneurs

Scott Smith, President
BizStarz
(b)(6)

January 7, 2011

Request for Comments: Trademark Litigation Tactics

The Trademark Technical and Conforming Amendment Act of 2010 became effective on March 17, 2010. Pub. L. No. 111-146, 124 Stat. 66 (2010). The Act includes a provision that the Secretary of Commerce, in consultation with the Intellectual Property Enforcement Coordinator, shall conduct a study and report to the Committees on the Judiciary of the House and Senate on "(1) the extent to which small businesses may be harmed by litigation tactics by corporations attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner; and (2) the best use of Federal Government services to protect trademarks and prevent counterfeiting." Trademark Technical and Conforming Amendment Act § 4. The study and report shall also include any policy recommendations deemed appropriate.

In connection with the study, the USPTO is requesting feedback from U.S. trademark owners, practitioners, and others regarding their experiences with litigation tactics, especially those involving an attempt to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner. The USPTO also is eliciting suggestions to address any allegedly problematic litigation tactics.

Please send your response to the following questions, or any additional comments, to TMFeedback@uspto.gov, with the subject line "Small Business Study." In order to ensure that your feedback may be considered, please submit it no later than January 7, 2011. Although the USPTO would find it most beneficial to receive responses to every item, you may answer all or any portion of the following questions.

1. Please identify whether you are a trademark owner or practitioner, and the general size and nature of your business or trademark practice, including the number of trademark applications and registrations your business has, or your practice handles. Please note that the USPTO will fully consider any comments you submit, even if you choose not to identify yourself in a particular manner.

My name is Scott Smith. I am not an attorney; I am an entrepreneur. I own BizStarz, a small Sacramento, CA public relations firm that represents small businesses and entrepreneurs. My company was called "EntrepreneurPR" until I got caught in the cross hairs of Entrepreneur Media, Inc. ("EMI"), a trademark bully that claims to own ALL rights to ALL versions of ALL uses of the common and generic word "entrepreneur," and targets small businesses they believe are too small or afraid to fight back.

My efforts to fight back and defend my small company (plus other entrepreneurs and the word entrepreneur), have dragged on for thirteen years so far, and have cost me an estimated $30,000,000+ in lost business, legal fees, and associated costs. It's also forced me to file personal bankruptcy, to stop purchasing nearly as many goods and services from other businesses, and to layoff all of my employees.

I worked very hard to build my PR firm from the ground up, starting with a home office in the corner of my bedroom. EntrepreneurPR soon became one of the fastest growing PR firms in the US. But my small firm was no match for a trademark bully who can afford to hire an army of lawyers from some of the world's largest law firms, and spend millions of dollars on litigation.

2. In approximately the last 5 years, please describe any instances of which you have first-hand knowledge where a small business may have been the target of litigation tactics attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner.

Unfortunately, I have first-hand knowledge of hundreds, if not thousands, of small businesses that have been victimized by trademark bullies. Trademark bullies are harassing and intimidating small business in every state in the country, as well as in other countries. A few notable examples include:

- **Virgin Enterprises Ltd.** claiming exclusive rights to the word "virgin"
- **Intel Corp.** claiming exclusive rights to the word "inside"
- **Monster Cable Products, Inc.** claiming exclusive rights to the word "monster"
- **Entrepreneur Media, Inc.** claiming exclusive rights to the word "entrepreneur"

(Note: each of these trademark bullies has harassed and intimidated untold numbers of small businesses, and virtually all of these small businesses were forced to give in because they were far too small and/or afraid to fight back, no matter how unreasonable or baseless the trademark bully's claims were):

Virgin Enterprises: One of entrepreneur Richard Branson's extensive family of companies. According to Wikipedia.org, "The brand name 'Virgin' arose when Branson and a partner were starting their first business, a record shop. They considered themselves virgins in business." Virgin Enterprises has since filed numerous lawsuits to prevent other "virgins in business" from using the word virgin. A few years ago, Virgin Enterprises filed a federal lawsuit against Jason Yang and his **VirginThreads.com** website featuring emerging independent fashion designers, alleging trademark infringement, dilution, and cyberpiracy. "All for using a word that's been in the English language for far longer than mogul Branson has been using it as a trademark for his businesses. As David Bollier [author of "Brand Name Bullies"] asks in a CNN Money story on the subject, 'If anyone can lay claim to that word, shouldn't it be the Catholic church?'" (Branson Attempts to Rip "Virgin" From the Dictionary, Chilling Effects Clearinghouse, July 10, 2005) Unfortunately, according to a message posted on Yang's website, "[Jason's website] is now closed. I would like to thank all the customers and visitors who have supported the young designers here for over 10 years. I have been privileged to work with so many talented people." The battle against Virgin Enterprises certainly severely hurt this entrepreneur's chance for success, as well as all of the emerging independent fashion designers who benefited from this small business. Sadly, Virgin Enterprises now owns virginthreads.com, according to checkdomain.com.

Intel Corp.: This global technology giant claimed infringement against Mark Stephens and his small nonprofit **Yoga Inside Foundation**, even though "Yoga Inside has nothing to do with computers. It provides free yoga classes in schools, treatment facilities, shelters, prisons and underprivileged communities. The nationwide program is represented in the Bay Area at more than a dozen schools and correctional facilities from Petaluma to San Jose....it was honored by Berkeley's Yoga Journal magazine for helping make yoga 'come alive in the world.' Yoga Inside began with gang members in Southern California juvenile-detention facilities. The 'inside' refers to incarceration." (Intel Forces Yoga Group To Fight For Its Name, San Francisco Chronicle, March 29, 2002) Not surprisingly, Yoga Inside couldn't afford to fight back, so like most small businesses attacked by a trademark bully, it was forced to give in to Intel's ludicrous claims and demands. Yoga Inside seems to have since ceased operations. The battle against Intel certainly severely hurt its chances for continued success.

Monster Cable: "Earlier this year, the *audio cable* company went after a small mini-golf chain in California called **Monster Mini Golf**....Monster Cable has forced '414 companies' into a settlement in which they turn over the rights to the use of 'Monster' in name to Monster Cable Inc, who then licenses it back to them for a fee....Monster Mini Golf says...that their legal fees are already 'well over $100,000...and will likely reach $250,000 when all is said and done.'" (Monster Cable target pleads its case on eBay, Lexology, December 24, 2008) Monster Cable's harassment and intimidation of small businesses has received more attention than most trademark bullying stories. "This is Round 26 in our Worst Company in America contest...Monster Cable....they sue everyone who uses the dictionary word 'monster'. My favorite lawsuit? Suing Mike Shkolnik who sold stuffed monsters online in his 'Monster Shop' at monster.biz." (Round 26: Gamestop vs Monster Cable, The Consumerist, April 18, 2008) Shkolnik was so

outraged by Monster Cable's bullying of small businesses, that he decided to produce "Monsters of Crock," a film documentary about "the corporate monsters who seek to control our language" (see: www.monstersofcrock.com).

Entrepreneur Media, Inc. (EMI): This magazine publishing company was founded by convicted bank robber Chase Revel (one of numerous aliases he's used to hide his criminal background), to peddle get-rich-quick schemes to unsophisticated opportunity seekers. Ironically, EMI, the publisher of Entrepreneur magazine, a magazine for and about entrepreneurs, has for decades been bullying an increasingly wide-variety of small businesses to prevent them for using the word entrepreneur. EMI even went after Heather Tornincasa and her start-up *apparel* company, **3Entrepreneurs, LLC**, claiming their use of the phrase "entrepreneur generation" for clothing infringed upon EMI's trademark rights. (The Name Game Gets Tricky for One Apparel Company, California Apparel News, February 11-17, 2005) EMI has probably never even used the word "entrepreneur" on clothing, and if it ever has, they know it was only an ornamental feature, not a source identifier. Even so, because of their vastly superior resources, EMI was able to quickly bully Heather and her two business partner sisters (they're triplets), into abandoning their dream of running an apparel business – before they were even able to get their business off the ground.

3. Please describe situations where you have been involved in receiving a cease-and-desist letter. Anecdotal information might include, but is not limited to, a description of whether the letter resulted in the small business ceasing its use of one or more marks, or whether the sender of the cease-and-desist letter withdrew or abandoned its demands against the small business owner.

In January 1998, my small public relations firm, then called **EntrepreneurPR**, was faxed a highly accusatory and aggressively worded cease-and-desist letter from Henry M. Bissell, a lawyer representing Entrepreneur Media, Inc. (EMI), the publisher of Entrepreneur magazine (by its title, a magazine obviously for and about entrepreneurs). Bissell claimed that my PR firm's name violated EMI's alleged trademark rights to the word "entrepreneur."

Among other bold demands, Bissell's letter demanded that we "deliver up for destruction all physical items bearing any form of the trademark ENTREPRENEUR, whether alone or in association with any other terms and/or graphical elements." After we challenged EMI's trademark claims over non-competing goods and services, Bissell fired back with another threatening letter, this time stating that, "[T]he classification system is essentially arbitrary and infringement can occur between goods and services in different classes. Therefore, we are not limiting our client to any particular class or type of goods or services. Wherever your client has used [Entrepreneur] in the trademark sense, we would contend infringement."

In other words, the publisher of a *magazine* for and about entrepreneurs, was claiming it somehow deserved, and had been granted, trademark rights to the word entrepreneur that covered ALL goods and services (note: EMI has a history of claiming their trademark is

"famous," but that claim is so laughable that they seem to only claim famousness when trying to intimidate a business they figure is way too small or naive to challenge even such a knowingly baseless claim).

Anyone who's ever viewed a magazine newsstand knows that the magazine industry is based on multiple (and competing) magazines being able to use common and descriptive words in their names. This of course makes sense. How else could consumers browsing a newsstand determine what magazines (or books or newspapers) they want to read?

However, EMI argues they are special and don't have to abide by long-established and widely accepted legal precedent or magazine industry standards. Using their logic, only one magazine should be allowed to market to certain types of people using the appropriately descriptive words in their names. So, only one magazine should be legally allowed to market to teachers, accountants or lawyers using these descriptive and generic words in their names (or in the name of any goods or services, according to EMI's claims). Not only does this smack of antitrust law violations and monopolistic conduct, it flies in the face of common sense and threatens to restrict consumer access to important information for a massive variety of subjects.

For example, using EMI's illogical claims, only one publication should be legally permitted to use the word "Lawyer" in its name. So hundreds of magazines, including California Lawyer, Wisconsin Lawyer, Los Angeles Lawyer, American Lawyer, Nevada Lawyer, Sacramento Lawyer, and Delaware Lawyer, should be deemed infringing, ordered to cease all use of the word lawyer, and be forced to pay significant "damages" to whomever "owns" the word lawyer and has been "damaged" by such rouge use of "their" word (it's very common for state and local bar associations to use the word lawyer in the name of their magazine or newsletter, so there are possibly thousands of such examples)

Of course, EMI's claims make no sense, are contrary to public policy, would undermine our economy, and would cause great harm and inconvenience to consumers. And the reasoning behind the "lawyer" example also applies to all the other thousands of common and generic words used in magazine titles that target or refer to a certain type of person or subject matter, such as golf, travel or parent.

4. Please describe situations where you have been involved in trademark litigation in state or federal courts. Anecdotal information might include, but is not limited to, a description of whether the lawsuit settled on the basis of the small business agreeing to cease its use of one or more marks, or on the basis of the plaintiff withdrawing or abandoning its trademark-related allegation(s). Alternatively, relevant information might include whether such lawsuits resulted in a court judgment and the nature of the judgment (such as requiring the small business to cease its use of one or more marks, assessing monetary liability (damages, lost profits, or attorneys' fees) against the small business, requiring the plaintiff to pay the defendant's attorneys' fees, or imposing sanctions against the plaintiff under Rule 11 of the Federal Rules of Civil Procedure).

As previously stated, my efforts to fight back against an out of control trademark bully go back well over a dozen years, and continue to this day. For sake of brevity, below is a short synopsis of what I've gone through so far. I am also willing to answer questions about my experience dealing with a trademark bully, and to provide additional information upon request.

1998: I was sued by EMI for trademark infringement over use of the common and generic word "entrepreneur."
2000: EMI filed for summary judgment, judge ruled in their favor and awarded them $337,280 in damages. I appealed to the Ninth Circuit.
2001: Forced to file personal bankruptcy. EMI filed an adversary complaint against my bankruptcy filing. Adversary complaint stayed pending outcome of trademark case.
2002: Ninth Circuit ruled in favor of my appeal, overturned the district court's ruling and ordered trademark case to trial.
2003: After bench trial, same judge again ruled in Entrepreneur Media's favor, increased damages to $669,656, plus $39,267 in costs and $680,985 in attorneys' fees, for a total award of $1,389,908. I again appealed to the Ninth Circuit.
2004: This time Ninth Circuit affirms district court's ruling; EMI pursues BK claims, BK case is bifurcated for trial.
2007: I won 1st trial in BK case.
2009: EMI won 2nd trial in BK case. I filed an appeal (pro se) with the Bankruptcy Appellate Panel for the Ninth Circuit, but BAP affirms BK court's ruling.
2010: I filed appeal (pro se) of BK court/BAP's ruling with the Ninth Circuit. Appeal is still pending, oral argument not yet scheduled as of January 7, 2010.

5. Please describe situations where you have been involved in opposition/cancellation proceedings instituted at the USPTO against small business owners. Anecdotal information might include, but is not limited to, a description of whether the proceedings settled on the basis of the small business agreeing to abandon its application(s) for one or more marks, or whether the proceedings settled on the basis of the plaintiff withdrawing or abandoning its notice of opposition or cancellation petition. Alternatively, relevant information might include a description of whether such proceedings resulted in a decision by the USPTO Trademark Trial and Appeal Board ("TTAB") refusing to register/canceling one or more marks owned by the small business, or whether such proceedings resulted in the TTAB imposing sanctions against the plaintiff under Rule 11 of the Federal Rules of Civil Procedure.

I have been involved in several opposition/cancellation proceedings at the USPTO/TTAB, all involving EMI, including:

June 1999: EMI filed a Notice of Opposition against my "EntrepreneurPR" trademark application (Opposition # 91114766). An examining attorney for the USPTO had searched the USPTO records and found no similar registered or pending mark that would bar registration, and determined that EntrepreneurPR was entitled to registration. Such a determination by the USPTO, it turns out, is often of little or no value. Even though the

USPTO had approved my EntrepreneurPR trademark, due to EMI's trademark claims, a district court judge ordered me to abandon my trademark, plus pay $1.4 million in damages and attorneys' fees to EMI for using a trademark that the USPTO had told me was not similar to any registered or pending trademarks.

August 1998: I filed a trademark application for the phrase "Entrepreneur Illustrated" (Serial # 75531328). The USPTO also determined it was entitled to registration after finding no similar registered or pending mark that would bar registration. But as with my above-mentioned EntrepreneurPR trademark, a district court judge gave the USPTO's determination no weight, and ordered me to abandon my Entrepreneur Illustrated trademark due to EMI's trademark claims, even though the USPTO has determined it was entitled to registration.

[Note: The cases below were assigned to an interlocutory attorney who displayed a strong bias towards pre se parties, so I felt I had no choice but to withdraw these cases without prejudice.]

October 2007: Unable to pay an attorney thousands of dollars, I filed "pro se" a Notice of Opposition against EMI's "Entrepreneur" trademark for "Pre-recorded audio and visual media namely CDs, videotapes, audiotapes, and floppy discs...," and for the "Production of radio and television programs..." (Opposition # 91180276) This trademark is a blatant attempt by EMI to monopolize the word "entrepreneur" and prevent anyone except EMI from being able to use the word "entrepreneur" as part of any electronic media, including pre-recorded media such as CDs and DVDs, or for any radio and television programs. It's immediately obvious that granting EMI such expansive and powerful trademark rights to a word as common and generic as entrepreneur, is preposterous and harmful to consumers and to our economy. Does this mean that the USPTO could grant someone such expansive and powerful trademark rights to other common and generic occupational titles, such as Chiropractor, Hairstylist, or Lobbyist? If not, how did they grant EMI this (and several other) trademarks on the word entrepreneur?

Unable to file an answer credibly defending such expansive trademark rights to a word as common and generic as "entrepreneur," EMI instead filed a motion to dismiss my notice of opposition, claiming a "failure to state a claim upon which relief can be granted." EMI also complained that, "Unwilling to accept defeat, Smith has embarked on a no-holds-barred attempt to undermine EMI's trademark rights. This Opposition is yet another harassing attempt by Smith to challenge EMI's trademark rights, resulting in a waste of both the Board's and EMI's valuable resources." Apparently, EMI wants the USPTO to believe that it's a complete waste of its resources to review a small business' allegations against EMI's controversial trademarks, but it's somehow not a waste of the USPTO's resources to review EMI's allegations and no-holds-barred attacks against small businesses that use the word entrepreneur.

March 2008: After finding out that EMI had blatantly defrauded the USPTO (and as a result, consumers) when it sought renewal of it's long abandoned "Entrepreneur Expo" trademark, I filed (also "pro se"), a Petition to Cancel this trademark (Cancellation #

92049001). Unable to file an answer credibly denying that it had defrauded the USPTO, EMI instead filed a motion to dismiss my petition to cancel, claiming that "Smith lacks standing to bring this cancellation action because he does not plead an interest in his own mark or a reasonable basis for his belief that he would be damaged by the continued registration of ENTREPRENEUR EXPO."

EMI's motion also included claims that "EMI is probably most ***famous*** for its flagship magazine, Entrepreneur....Smith was not satisfied with the [district] court's ruling, and has since embarked on a personal mission to challenge EMI's trademark rights while attempting to drain EMI of financial resources; disrupting EMI's business operations; jeopardizing EMI's potential business opportunities; and smearing the good name of EMI and its employees [Talk about the pot calling the kettle black! And can one even smear the "name" of a company founded by a convicted bank robber as a way to scam people out of their money?]." (emphasis added)

6. Do you think trademark "bullies"[1] are currently a problem for trademark owners, and if so, how significant is the problem?

I don't just *think* trademark bullies are a problem; it's an indisputable fact. I think the only people with firsthand knowledge that might disagree are trademark bullies, or lawyers who work for and thus profit from trademark bullies. Since there's no such thing as public defenders for civil litigation, trademark bullies are able to terrorize countless thousands of small businesses.

Trademark litigation is hugely expensive, and can easily cost 100s of thousands of dollars and drag on for several years. Many trademark battles cost well into the millions, and last five, ten, or even more years. The *average* cost of trademark litigation is a whopping $700,000, according to the 2007 Report of Economic Survey published by the American Intellectual Property Lawyers Association. Only a small fraction of small businesses can afford such expensive and risky legal battles; especially as a defendant since defendants rarely get compensated if they "win" a trademark dispute.

Even "giving up" to a trademark bully can be a financial nightmare for a small business (not to mention a marketing and public relations nightmare). Several years ago, Cintara, a branding agency in California's Silicon Valley, estimated that "$100,000 is the typical minimum cost of changing a name...even if the name is free and is for a small business." Cintara's fees alone are $18,000 to $25,000 to develop names for companies.

As The Wall Street Journal so accurately explained, "Defending intellectual property is a nasty predicament for the entrepreneur with a small business...the question isn't whether to defend intellectual property, but how to do it without losing your shirt....Entrepreneurs who want to stay in business are often forced to fight...can make or break many small businesses." ("Protecting intellectual property is expensive--and often crucial," The Wall Street Journal, September 25, 2000)

7. Do you think aggressive litigation tactics are more pervasive in the trademark area than in other areas of the law?

Yes, because intellectual property law seems to be even more "grey" and confusing to people (including attorneys and courts) than other areas of law. This leads to great fear and apathy, and has a particularly tremendous chilling effect on small businesses (and even on some large businesses). EMI and its attorneys even admit that they often can't tell whether or not certain third-party use of the word "entrepreneur" infringes upon their claimed trademark rights without a fair amount of research. And it's very confusing to understand why EMI claims certain uses of the word entrepreneur are infringing, but not others. For example, EMI claims that my use of the word entrepreneur infringed upon their trademark rights. Yet, EMI *favorably* featured my so-called infringing use of the word entrepreneur in one of EMI's magazines! And my experience is not unique. EMI has gone after numerous companies for trademark infringement even though EMI has favorably featured them in magazines owned and published by EMI.

EMI has an extensive and bizarre history of *promoting* third-party use of the word entrepreneur that infringes upon EMI's *claimed* trademark rights. For example, EMI has accepted ads from, and/or promoted, the Entrepreneur's Source franchise company, Entrepreneur of the Year award contests, the Accidental Entrepreneur newsletter, the Entrepreneur America business development program and book, Entrepreneur Expos, the North Dakota Entrepreneur Hall of Fame, the Entrepreneur Mentor Society, Publishing Entrepreneur magazine, and CNN's Entrepreneurs Only television program.

So how does a trademark bully like EMI determine what is and isn't infringing use of the word entrepreneur by third parties? It's really anyone's guess, but it seems pretty obvious that they target small businesses, while avoiding businesses large enough to fight back and possibly get EMI's trademarks cancelled for being generic and fraudulently acquired.

When the "real property" of small businesses is threatened or seized due to aggressive or unreasonable use of imminent domain claims, this frequently generates a large amount of public outrage and media coverage. However, when the "intellectual property" of small businesses is threatened or seized due to aggressive or unreasonable trademark claims, it generally generates much less if any public outrage and media coverage (probably because trademark bullies can be quite sneaky and work hard to keep their bullying tactics away from public scrutiny, and small businesses victimized by trademark bullies are frequently too damaged or embarrassed to let others know what happened to them).

This is very unfortunate since the value of the intellectual property of a small business often significantly exceeds the value of its real property, particularly for fast-growing service and technology firms, the businesses that hire the most employees and are most important to America's economic future.

8. Do you think the USPTO has a responsibility to do something to discourage or prevent trademark bullying? If yes, what should the USPTO do?

Absolutely. Which government agency is more informed, important or impacted than the USPTO when it comes to protecting the integrity of our trademark system, than the USPTO?

As it stands now, I would say the USPTO is actually *encouraging* trademark bullying and trademark fraud. It's no secret to trademark bullies and fraudsters that the USPTO doesn't really have any systems or policies in place to discourage or prevent trademark bullying. I know from firsthand experience that the USPTO will not even act upon credible evidence of trademark bullying or trademark fraud.

For years I've been letting the USPTO know that EMI is a trademark bully that blatantly and repeatedly defrauds the USPTO. But I have been repeatedly told that there is nothing the USPTO can do, that they have no system for investigating or stopping trademark bullies or trademark fraud. I've also been repeatedly told it is up to me or someone else to come up with the vast amounts of time and money necessary to prove EMI is bullying others and defrauding the trademark office. This makes no sense. If someone presents the USPTO with credible information that someone is using their agency to bully others and/or are defrauding the USPTO, then the USPTO should initiate an investigation (and if necessary, share the information with the appropriate law enforcement agency).

Many government agencies not only have systems in place to deal with fraudsters, they *encourage* people to report acts of fraud or abuse. For example, the U.S. Small Business Administration ("SBA") has a section on their website called, "Report Fraud, Waste & Abuse." On this section of their website, "You may report fraud, waste, mismanagement, or misconduct involving SBA programs or employees either online or by calling the OIG Hotline toll-free at (800) 767-0385." This section of the SBA's website indicates that they will launch an investigation based on reports of fraud or misconduct involving SBA programs or employees. Not only that, the SBA's website sends out a clear and strong message that it takes reports of fraud and abuse very seriously — and investigates them.

Now compare this to the USPTO. According to its website, the USPTO is "Leading the World in Intellectual Property Protection and Policy...the Federal agency for granting U.S. patents and registering trademarks...The continued demand for patents and trademarks underscores the ingenuity of American inventors and ***entrepreneurs***. The USPTO is at the cutting edge of the Nation's technological progress and achievement. The USPTO advises the President of the United States, the Secretary of Commerce, and U.S. Government agencies on intellectual property (IP) policy, protection, and enforcement; and promotes the stronger and more effective IP protection around the world. The USPTO furthers effective IP protection for U.S. innovators and ***entrepreneurs*** worldwide by working with other agencies to secure strong IP provisions in free trade and other international agreements." (emphasis added) Note that even the USPTO, the federal agency that granted EMI's its trademarks, uses the word "entrepreneur" generically, without at all acknowledging EMI's trademark claims!

Given all this responsibility, how could the USPTO not have any systems in place to deal with "fraud, waste, mismanagement, or misconduct involving" involving trademarks?

When people submit certain information to the USPTO, they must include a signed declaration acknowledging that, "*all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that* ***willful false statements and the like so made are punishable by fine or imprisonment, or both****, under section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom.*" (Emphasis added)

Yet, according to my research, which has been confirmed by senior USPTO officials, nobody has ever been criminally prosecuted for making knowingly false statements to the USPTO. This despite the fact that the USPTO knows (or should know), that numerous people have made knowingly false statements to the USPTO, and doing so is supposedly "punishable by fine or imprisonment, or both."

If the USPTO went after even a few people for trademark bullying or trademark fraud, it would act as a significant deterrent to trademark bullying and trademark fraud. As it stands now, the threat that "willful false statements and the like are punishable by fine or imprisonment, or both," is completely meaningless; it's a joke. It's incredible that not a single person has ever been criminally prosecuted for making knowingly false statements to the USPTO, even though the USPTO has actual knowledge of people making knowingly false statements to the USPTO, such conduct seriously undermines the integrity of our trademark system, and it violates the federal False Claims Act.

9. Do you think the U.S. courts have a responsibility to do something to discourage trademark bullies? If yes, what should the U.S. courts do?

Absolutely. Trademarks are governed by the Lanham Act, which is found in Title 15 of the U.S. Code and contains the federal statutes governing trademark law in the United States. Since U.S. courts are effectively in charge of enforcing the Lanham Act, it is imperative that U.S. courts discourage trademark bullies. U.S. courts should use their inherent powers to impose sanctions significant enough to discourage trademark bullies and their attorneys. Attorneys who knowingly help trademark bullies beat up on small companies should be heavily sanctioned and/or suspended. U.S. courts should make it highly unprofitable to be a trademark bully, or for an attorney to represent a trademark bully. Currently, there are obviously not enough, or at least not strong enough, deterrents against trademark bullies or their attorneys.

10. What other U.S. agencies may have a responsibility to do something about the problem?

Not sure, but possible candidates seem to be the Federal Bureau of Investigation, the Justice Dept, the Commerce Dept, the Federal Trade Commission, the U.S. Attorneys' Office, the Office of the Solicitor General, the U.S. Marshals Service, and the Office of the Attorney General.

After trying to get several government agencies to look into the problem of trademark bullies and their devastating attacks against small businesses, I can relate to how financial fraud investigator Harry Markopolos must have felt during his years of trying to expose and stop Bernie Madoff's massive Ponzi scheme. I can especially relate after spending years trying to get agencies such as the USPTO or the FBI to investigate EMI's blatant defrauding of the trademark office. Even though you're sure the fraudsters will eventually be investigated and prosecuted, it's very frustrating and painful to know untold thousands of people are being significantly and irreparably harmed, but you haven't yet been able to get a federal agency to take your reports seriously enough to launch a full investigation.

11. Do you think Congress has a responsibility to do something to discourage or prevent trademark bullying? If yes, what should Congress do?

Absolutely. In fact, to make Congress aware of the problem of trademark bullies, in November 2002, and in cooperation with Donald A. Manzullo, then Chairman of U.S. House Small Business Committee, I organized and hosted the "Acute Intellectual Property Issues For Small Businesses" conference. The conference, perhaps the first of its kind, was held at the Cannon House Office Building in Washington, DC.

The overview of the conference read, "This conference is an important event for small businesses, the undisputed backbone of our economy. The focus of the event is to open a dialogue about the challenges facing small businesses in the area of intellectual property and discuss possible solutions. The location, in the heart of our nation's capital, will help raise awareness among lawmakers in order to generate further dialogue, and ultimately, new policies to protect small businesses."

Several people with firsthand knowledge of small business intellectual property issues, spoke at the conference, including entrepreneurs, attorneys, and members of the small business media. We were also honored to have Sharon Marsh, then the USPTO's Administrator for Trademark Policy and Procedure, as a featured speaker (the honorable James E. Rogan, at the time the director of the USPTO, was also invited, but was unfortunately not able to attend).

The conference was well received and generated a fair amount of interest from Capitol Hill. However, it takes a lot of time and money to keep the interest of Capitol Hill, neither of which I had at the time. So unfortunately, I was unable to build on the momentum started by this conference.

12. Please provide any other comments you may have.

I was happy and encouraged when I first learned that the USPTO was requesting feedback about the growing problem of trademark bullies. It's definitely a serious problem harming countless small businesses and the U.S. economy, and needs to be thoroughly investigated by the appropriate government agencies. Hopefully, this is only

the first of many steps towards reducing the widespread damage and terror caused to small businesses by trademark bullies.

If I may, I also have some suggestions. First of all, it seems that the USPTO mostly targeted attorneys for input about trademark bullies. The USPTO should mostly seek input from small businesses, the people most affected. Small businesses are arguably the most knowledgeable about the problems caused by trademark bullies, as well as the most motivated to speak up about the problem.

Most small businesses can't afford to hire an attorney to fight back against a trademark bully, and if they can, many can only afford to hire attorneys who don't even specialize in trademark law. So the people most affected by trademark bullies are mostly unaware that the USPTO is seeking information about trademark bullies. As a matter of fact, I read numerous publications that cover topics of interest to small businesses, and I don't recall any of them mentioning anything about the USPTO seeking feedback about trademark bullies. This leads me to believe that the USPTO didn't tell many small business media outlets or organizations that it was seeking information about trademark bullies.

I would also like to suggest that the USPTO adds a small business Ombudsman, or better yet, creates a small business department, like many city, county, state, and federal agencies have done. Large businesses can afford high-powered lobbyists and attorneys to promote their interests. And large companies basically control the agendas of most intellectual property organizations. However, as the USPTO says on its Stopfakes.gov website, "Small businesses often find themselves at a particular disadvantage because they often lack the resources and expertise available to larger corporations." So despite the fact that small businesses are responsible for a significant percentage of the trademark applications that are filed every year (if not most), small businesses have no real voice when it comes to trademark issues.

I am also willing to travel to Washington, DC to testify and/or meet with USPTO officials or members of Congress about my experiences dealing with a trademark bully, and my knowledge of other examples of trademark bullying. I have an enormous amount of knowledge and documentation about this issue, and can also encourage numerous other small businesses to share details about their unfortunate experiences dealing with a trademark bully.

13. Why should we care what happens to small businesses?

As stated in the mission statement of the U.S. Small Business Administration ("SBA"), "small business is critical to our economic recovery and strength, to building America's future, and to helping the United States compete in today's global marketplace."

Public policy in the U.S. has always supported the promotion of small business and entrepreneurship. This is particularly true today as individuals and families are facing alarmingly high rates of unemployment caused by the current state of the U.S. economy. President Obama's recent Proclamation that November 14 through November 20, 2010

was "National Entrepreneurship Week," and that November 19, 2010 was "National Entrepreneurs' Day," demonstrates how important small businesses and entrepreneurs are to the U.S. and our economy (it's also further proof that the word "entrepreneur" is generic, and that EMI will not dare claim infringement against parties they know they can't bully into submission!).

Small business is the undisputed backbone of the U.S. economy. There are approximately 29.6 million total businesses in the U.S., according to the SBA's Office of Advocacy. And small firms with fewer than 500 employees represent a staggering **99.9%** of the U.S.'s estimated 29.6 million businesses. In other words, of the U.S.'s 29.6 million total businesses, only about 18,000 are not small businesses!

What share of net new jobs do small businesses create? A lot! In fact, *most* new jobs are created by small businesses. According to the U.S. Dept. of Labor, firms with fewer than 500 employees accounted for 64 percent (or 14.5 million) of the 22.5 million net new jobs (gains minus losses) between 1993 and the third quarter of 2008. (Source: SBA Office of Advocacy)

You should also care about small business because small businesses are known for being more innovative than large, established businesses. And most large businesses of course started out as struggling small businesses. Think of all of the useful products and services we would be without if the following entrepreneurs had been put out of business by a trademark bully before they were able to succeed: Steve Jobs, Oprah Winfrey, Henry Ford, Steven Spielberg, Martha Stewart, Ted Turner, Bill Gates, Mark Zuckerberg, Jeff Bezos, and Ben & Jerry, just to name a few. Also think about how much weaker our economy would be if these entrepreneurs had been struck down by a trademark bully, and their once small businesses hadn't been allowed to flourish.

Like young children, small businesses need protection from bullies that will do them serious harm if allowed to. Small businesses don't necessarily need special *favors*, but they definitely can't defend themselves against attacks by trademark bullies that can be many millions of times larger. Such David vs. Goliath battles aren't even close to being fair, and are extremely harmful to the U.S. economy.

Try imagining all the products and services that we don't have access to because a trademark bully crushed a small, defenseless business to death. For example, how many more underprivileged juveniles could have been "saved" by Mark Stephens' non-profit Yoga Inside Foundation if Intel hadn't waged war against Yoga Inside? What sort of unique fashions might have Heather Tomincasa brought to market had Entrepreneur Media not been able to bully her so badly that she and her sisters gave up on their startup apparel company?

So again, why should we care what happens to small businesses? Because the more small businesses prosper in the U.S., the more the U.S. prospers. It's truly a win-win situation. And a more prosperous U.S. means a faster economic recovery, more jobs, more new and innovative products and services, better schools, less crime, better police and fire

protection services, and a better quality of life for everyone (except may be the trademark bullies!).

14. History of the Word Entrepreneur

Since trademark bully EMI is aggressively trying to monopolize the word "entrepreneur," a word without synonym that predates EMI by several centuries, here is an excerpt of Peter G. James Sinclair's recent YoungEntrepreneur.com Blog article that discusses the history of the word entrepreneur:

"The earliest definition is found in the 13th century, where we learn the word's root. The origin of the English word entrepreneur comes from the French word entreprendre, which can be translated to mean 'to do something' or 'to undertake'. Then in the 16th century, we see the first mention of business used in the definitions. An entrepreneur is defined as someone who undertakes a business venture. Richard Cantillon, in the 18th century ascribed to a definition which added a risk component to the definition. Therefore an entrepreneur was someone who undertakes a business venture with no guarantee of profits, or is rather the bearer of risks inflicted by changes in market demand." (The 8 Vital Attributes of a Successful Young Entrepreneur, YoungEntrepreneur.com Blog, December 30, 2010)

Thank you for your time and for seeking input about trademark bullies.

Sincerely,

s/Scott Smith

[1] A trademark "bully" could be described as a trademark owner that uses its trademark rights to harass and intimidate another business beyond what the law might be reasonably interpreted to allow.